

SUMMARY OF WATER QUALITY ORDER

ORDER NO.	WQ 2007-0010
DATE ADOPTED	October 2, 2007
PETITION TITLE	PETITION OF ESCONDIDO CREEK CONSERVANCY AND SAN DIEGO COASTKEEPER (ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R9-2006-0095 FOR CITY OF ESCONDIDO HALE AVENUE RESOURCE RECOVERY FACILITY)
POPULAR NAME <i>[if applicable]</i>	N/A
REGIONAL BOARD	San Diego Regional Water Quality Control Board
FILE NO[S]	SWRCB/OCC File A-1796

PRECEDENTIAL DECISION

On October 11, 2006, the San Diego Regional Water Quality Control Board (San Diego Water Board) issued Order No. R9-2006-0095 (Settlement Order). The Settlement Order resolved potential liability by the City of Escondido (City) for violations alleged in its operation of the Hale Avenue Resource Recovery Facility, an activated sludge wastewater treatment facility. Generally, the City discharges secondary treated effluent through the Escondido Land Outfall that runs approximately nine miles along Escondido Creek and the San Elijo Lagoon in accordance with Order No. R9-2005-0101, national pollutant discharge elimination system (NPDES) No. CA0108971. During extreme wet weather conditions, the City discharges tertiary-treated effluent to Escondido Creek pursuant to Order No. R9-2003-0394, NPDES No. CA0108944.

The violations alleged in the San Diego Water Board's complaint sought a total of \$1,335,000 in mandatory minimum penalties (MMPs) and \$462,500 in discretionary liability. The Settlement Order imposed civil liability in the amount of \$1,162,150. Of that amount, the City was to deposit \$690,000 into the State Water Board Cleanup and Abatement Account. The remaining \$462,150 was to be suspended and waived if the City submitted a final copy of two technical studies. The total liability specified in the Settlement Order was less than the mandatory liability identified in the complaint.

A timely petition was filed by the Escondido Creek Conservancy and the San Diego Coastkeeper. The Petitioners claim that the Settlement Order violated the Water Code provisions concerning MMPs. In its defense, the City asserted that two of the statutory defenses to MMPs were applicable. The San Diego Water Board justified its reduced assessment by explaining in its findings that acceptance of the City's settlement offer would avoid the need for an administrative hearing and possible judicial review; thus, conserving valuable staff resources.

The order notes that the San Diego Water Board did not make any factual findings as to the merits of these assertions or as to whether they constituted affirmative defenses. The order concludes that once MMP violations have been alleged and a complaint issued, any resulting

settlement agreement cannot be for an amount lower than the statutory minimum, absent a finding that the allegation was made in error or that one of these defenses applies. It also notes that the City has the burden to prove any such defense.

The order vacates the Settlement Order and remands the matter to the San Diego Water Board. The San Diego Water Board must either withdraw or revise the complaint, making specific findings as to the alleged violations, or hold a hearing and make factual determinations as to any affirmative defenses alleged by the City. The amount of liability to be assessed must be no less than the minimum liability required by Water Code section 13385, based on the factual determinations of the San Diego Water Board or, where appropriate, its Executive Officer.